IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11528 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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V K SAXENA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11528 of 1994

MR PARESH UPADHYAY for Petitioner No. 1

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-2

MR MJ PARIKH for Respondent No. 3

MR YN OZA for Respondent No. 4-5

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 18/10/2004

ORAL JUDGEMENT

In this petition, the learned Counsel for the petitioner has placed on record a letter dated 3rd September, 2004, written by him by the petitioner, in which he has informed the petitioner that for want of his response to his communications, he is compelled to request the Registrar of Gujarat High Court to delete his appearance on behalf of the petitioner. In view of the fact that the petition was, even in the recent past, heard from time to time and the Counsel for the petitioner having participated in the proceedings, I am unable to accept the request of the learned Counsel Shri Paresh Upadhyay to retire from the matter.

2. In this petition the petitioner had questioned his proposed supersession in the matter of promotion to the post of Assistant Conservator of Forest and prayed for being granted the said promotion with effect from the date from which his immediate junior was so promoted, and

has also prayed for all consequential benefits.

3. The premises on which the petitioner has filed the present petition is that though the petitioner had fully undergone a penalty imposed upon him by order dated 25.6.1990, by which the pay of the petitioner was reduced by 3 stages for a period of 2 years with effect from 1.6.1990, the Departmental Promotion Committee kept the case of the petitioner in sealed cover. It is the case of the petitioner that when he has fully undergone the penalty in question which was over on 31.5.1992, the subsequent Departmental Promotion Committee could not have kept his case in sealed cover.

4. The State Government had filed an affidavit dated 30.11.1994, in which it is pointed out that the case of the petitioner was not kept in the sealed cover, but that the Departmental Promotion Committee, considering the service record of the petitioner, did not find him fit for promotion.

5. In this view of the matter, the sole basis for filing the present petition is factually found to be incorrect. The petitioner's grievance that his case was kept in the sealed cover is not born out from the record.

6. The Counsel for the petitioner however, submits that the affidavit-in-reply dated 30.11.1994 filed by the respondent was made available to him on 13.8.2004 and on account of the petitioner not responding to his communications, he had not been able to file affidavit-in-rejoinder and take up the contention against the decision of the Departmental Promotion Committee of declaring the petitioner unfit for promotion.

7. I find that since the sole basis for filing the petition was that the case of the petitioner was kept in sealed cover contrary to the Rules, and when the said factual averment is found to be incorrect, there is no further purpose in entertaining the present petition. However, if the petitioner has any greivance against his categorisation by the Departmental Promotion Committee and the promoting authority as he being unfit for promotion to the post in question, it will be open for the petitioner to agitate the same in accordance with law, and the fact that the petitioner was made aware about this aspect of the matter by serving of a copy of the affidavit-in-reply of the Government only in August, 2004 surely will not be lost sight of.

Subject to the above observations, the petition

fails and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas